IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 184 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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KANUBHAI ADABHAI PARMAR - Applicant
Versus
BHALABHAI SAMANTBHAI ZALA AND OTHERS – Opponents

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Appearance :
MS SNEHA A JOSHI for the Applicant.
MR KIRTIDEV R DAVE for Opponent Nos.: 1 - 3.
MS NANDINI JOSHI, ADDITIONAL PUBLIC PROSECUTOR for Opponent No. 4.

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 05/05/2006

ORAL JUDGMENT

1. This revision is directed against the order dated 27-02-2006 passed by the learned Presiding Officer and Additional Sessions Judge, 5th Fast Track Court, Nadiad in Sessions Case No. 286 of 2003. The learned Judge, by passing the order, rejected the application for

consolidation of two cases i.e. Sessions Case Nos. 286 of 2003 with 16 of 2003. The first case arises out of the Crime Register No. I-99/2002 for the offences punishable under Sections 323, 324, 325, 504 and 114 IPC whereas the second case arises out of the Crime Register No. I-100/2002 for the offences punishable under Sections 302, 324, 323, 504 and 34 IPC. Both the crimes are registered at the Kapadwanj Police Station (Rural). The learned Judge not only disallowed the consolidation of the case, but also remitted the first case i.e. Sessions Case No. 286 of 2003 with its earlier number i.e. Criminal Case No. 2390 of 2002 to the learned Judicial Magistrate (First Class), Kapadwanj for trial.

2.1 Ms. Sneha Joshi, learned Advocate for the applicant, submitted that both the cases are cross-cases and as they arise out of the same incident, they may be heard together and disposed of by consolidating the same. It is further submitted by the learned Advocate that the learned Judge has erred in interpreting the provisions contained in Section 228 of the Code of Criminal Procedure, by which she remitted the cases to the learned Judicial Magistrate (First Class), Kapadwanj.

2.2 The learned Advocate for the applicant has placed reliance on the following judgments in support of the submissions made at the bar:

(i) **Sudhir & Others Vs. State of M. P., 2001 Cr. L. R. [SC] 212.**

The learned Advocate submitted that the Supreme Court, in this case, considered the provisions of Sections 154 and 209, 228 (1) and 323 of the Code of Criminal Procedure. The Apex Court further held that when a Magistrate has committed the case on the ground of his legislative compulsion by Section 209, its cross-case, having no offence exclusively triable by the Sessions Court, must appear to the magistrate as one which ought to be tried by the same Court of Sessions. Hence, the Magistrate can exercise the special power conferred on him by virtue of Section 323 of the Code when he commits the cross-case also to the Court of Sessions. Commitment under Sections 209 and 323 might by through two different

channels, but once they are committed their subsequent flow could only be through the stream channelised by the provisions contained in Chapter XVIII. The Apex Court, therefore, held that the Sessions Judge ought not have to transfered the second case to the learned Chief Judicial Magistrate as he did, but he himself should have tried it.

(ii) **State of M. P. Vs. Mishrilal (Dead) and Others, 2003 SAR (Criminal) 409.**

Relying on head-note 'B' of this judgment, the learned Advocate submitted that in cross-cases, when one of the parties has lost one of its members, it would be fair to decide both the cases together by the same Court in view the guidelines given. The cross-cases should be tried together by the same Court irrespective of the nature of the offence involved. The rationale behind this is to avoid conflicting judgments over the same incident because if the cross-cases are allowed to be tried by two Courts separately, there is

likelihood of conflicting judgments.

(iii) **Badal Chowdhury Vs. State of West Bengal, 2005 Cri. L. J. 433.**

The learned Advocate has cited this judgment in support of submission that when two cases are arising out of the same incident, they cannot be taken up for trial by two separate Courts. It must be tried by the same Court and the judgment must be pronounced by that Court in respect of both the cases on the same day.

(iv) **Dawood Osman Kumbhar Vs. Umar Ahmad Juneja & Others, I (2005) CCR 15.**

It is submitted by the learned Advocate by citing this judgment, that when cross-cases are filed, both of them should be heard and disposed of simultaneously.

2.3 In view of the ratio laid down in above mentioned judgments, the learned Advocate for the applicant submitted that the prayer, as set out in the application to consolidate the cases arising out of Crime Register Nos. 99 of 2002 and 100 of 2002 and hear them together, be granted, and necessary directions in that regard be given to the learned Judge and the impugned order be quashed and set aside.

3. As against the aforesaid submissions, Mr. K. R. Dave, learned Advocate for opponent Nos. 1 to 3, filed a detailed affidavit-in-reply, stating therein that the applicants are making hue and cry for not deciding the application for alteration of the charge preferred at Exh. 21, but the same has already been decided by the learned Judge by order dated 21-12-2005 and, therefore, the statements made by the learned Advocate for the applicants is false. Copy of the order passed by the learned Judge is annexed along with the affidavit-in-reply by opponent Nos. 1 to 3. The learned Advocate further submitted that on perusal of the *panchnama* produced in both the cases, it becomes clear that the place of incident and the cause of the incident are quite

different in both the cases and, therefore, both the cases are required to be tried separately. The learned Advocate further submitted that the statements of witnesses further make it clear that the incidents in both the cases are distinct and, therefore, the two cases cannot be tried simultaneously, as prayed for by the applicants. In view of the aforesaid facts and circumstances and as the applicants have not made out a case for the grant of relief, as prayed for in the revision, the learned Advocate prayed that the revision is liable to be rejected.

4. Ms. Nandini Joshi, learned Additional Public Prosecutor, submitted that the prosecution had submitted an application in Criminal Case No. 2390 of 2002 requesting the learned Judicial Magistrate (First Class) to add Sections 326 and 307 IPC in the complaint filed by the applicant i.e. I-CR No. 99 of 2002 for the injuries sustained by one Dhamabhai Chaturbhai Parmar. Thereafter, the case was committed to the Court of Sessions, Nadiad. The learned Additional Public Prosecutor further stated that in the application dated 03-09-2005 *vide* Exh. 21 in Sessions Case No. 286 of 2003, the request was reiterated. However, Dhamabhai

Chaturbhai Parmar died on 10-04-2004 whereas the application of the opponent Nos. 1 to 2 came to be granted for trying both the cases separately. The learned Additional Public Prosecutor submitted that even considering the provisions contained in Sections 209 and 228 of the Code of Criminal Procedure, the learned Judge ought not to have remitted the case back to the learned Judicial Magistrate (First Class) but tried both the cases together after considering the same.

5. Having heard the learned Counsels of both the sides and on perusal of the averments made in the Revision Application and the order passed by the learned Judge on the application, which was preferred by the applicants, to consolidate the two cases i.e. Sessions Case Nos. 286 of 2003 and 16 of 2003 for the Crime Register Nos. I-99/2002 and I-100/2002, respectively, of the Kapadwanj (Rural) Police Station, it is clear that the learned Judge came to the conclusion that that the first case was in respect of election related dispute while the other was in respect of collection of money for the purpose of *Navratri* festival. Therefore, in the opinion of the learned Judge, the nature of incidents in both the cases were quite different and they, therefore,

could not be tried together. Taking into consideration the catena of decisions rendered by the Supreme Court and the High Court, the learned Judge held that both the cases cannot be considered as cross-cases and, therefore, the application came to be rejected.

6. If the Magistrate commits the matter to the Sessions Court for framing of charge under Section 209 of the Code of Criminal Procedure, then the Sessions Court has to frame the charge under Section 228 instead of remitting back the matter to the Chief Judicial Magistrate. Even the Apex Court has reiterated in the judgment in **Sudhir & Others Vs. State of M. P.** *(supra)* that when the Magistrate has committed two cases to the Court of Sessions for the trial and the charge is framed in one case and the second case is transferred to the Magistrate for trial, then the transfer of case to the Magistrate was not proper. In view of the ratio laid down by the Apex Court in the aforesaid judgments, the learned Judge, in my view, ought not have remitted the case to the learned Judicial Magistrate (First Class), Kapadwanj for trial. Even the provisions in Section 209 and 228 (1) of Code of Criminal Procedure make it abundantly clear that the Sessions Judge ought not have

transferred the case to the Chief Judicial Magistrate, as was done in the present case, but he himself should have tried the case.

7. For the foregoing discussion and in view of the provisions contained in Sections 209 and 228 of the Code of Criminal Procedure and the ratio propounded by the Apex Court in the judgments cited by the learned Advocate for the applicants, the prayer, as set out in the application to quash the impugned order, is required to be granted.

8. In the net result, the Criminal Revision Application is allowed. The order dated 27-02-2006 passed below Exh. 30 by the learned Presiding Officer and Additional Sessions Judge, 5th Fast Track Court, Nadiad in Criminal Case No. 286 of 2003 is hereby quashed and set aside. Criminal Case No. 286 of 2003 is ordered to be tried along with Sessions Case No. 16 of 2003, even if it be by recalling Sessions Case No. 286 of 2003 i.e. Criminal Case No. 2390 of 2002 from the learned Judicial Magistrate (First Class), Kapadwanj. Direct Service today is permitted.

[H. B. ANTANI, J.]

/shamnath